

THIS INSTRUMENT PREPARED BY:

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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

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THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$3,000,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE LENDER UNDER THE TERMS OF THIS MORTGAGE.

**MORTGAGE, ASSIGNMENT OF LEASES RENTS AND PROFITS  
AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES RENTS AND PROFITS AND SECURITY AGREEMENT (the "Mortgage") is given this 15 day of MAY, 2018, by:

Seafront Properties LLC  
(“Mortgagor”)

*Address: c/o Rubin Mackay International Law PC, 303 Fifth Avenue, Suite 1109, New York, New York 10016*

in favor of

Gregory Abovsky and Lilian Abovsky, as to eighty-three percent (83%)  
and Daniel Chernin, as to seventeen percent (17%)  
(“Lender”)

*Address: \_\_\_\_\_*

WHEREAS Mortgagor is justly and lawfully indebted to the Lender in the principal sum of THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00) (the "Loan"), as evidenced by that certain Promissory Note of even date herewith executed and delivered by Mortgagor to Lender (the "Note"). This Mortgage secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications thereof; (b) the payment of all other sums, with interest, advanced by Lender to protect the security of this Mortgage; and (c) the performance of Mortgagor's covenants and agreements under this Mortgage and the Note. [The Note, this Mortgage and any other documents given to evidence, secure or guarantee the Loan, or otherwise given in connection with, related to or arising out of the Loan, are hereinafter collectively referred to as the "Loan Documents."]

NOW THEREFORE, in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby mortgage, grant and convey to Lender the real property located in **Miami-Dade County, Florida**, more particularly described as follows (the "Property"):

Unit 1508, of 10295 COLLINS AVENUE RESIDENTIAL CONDOMINIUM, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 26014, Page 98, of the Public Records of Miami-Dade County, Florida, together with all amendments thereto and an undivided interest in the common elements appurtenant thereto.

Tax ID No.: 12-2226-044-1560

Property Address: 10295 Collins Avenue, Unit 1508, Miami Beach, Florida

**TOGETHER WITH** all the improvements erected thereon, all easements, rights of way, tenements, hereditaments appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights, development rights, permits, licenses, reversions, remainders, and rents, issues, profits and proceeds thereof, now or hereafter a part of or otherwise relating to the real property or the improvements located thereon, together with all additions thereto and replacements thereof.

**TOGETHER WITH** all appliances, machinery, equipment, fittings, fixtures, furniture, furnishings, and articles of personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor and located in, upon or under the real property or any improvements located thereon (whether actually or constructively attached thereto) and used or usable in connection with any present or future operations conducted on the real property or such improvements, together with all additions, substitutions, improvements, substitutions and replacements thereof.

**TOGETHER WITH** all the rights, interest and privileges which Mortgagor, as lessor, has and may have in the leases or tenancies (oral or written) now existing or hereafter made and affecting the Property as such leases or tenancies may have been, or may from time to time be hereafter modified, extended and renewed, with all rents, income and profits due and becoming due thereunder.

**TOGETHER WITH** all development rights, contracts of sale, developer agreements, construction contracts, architectural and engineering contracts, labor, materials and supplier contracts, permits, licenses, certificates, plans and specifications, architectural drawings, construction bonds, utility contracts, warranties, books and records, payments and deposits made in connection with construction, and all other documents, instruments and records relating to the intended construction and development of the Property.

**TOGETHER WITH** all causes of action of Mortgagor relating to the Property hereby encumbered and all judgments, awards or damages (including but not limited to severance and consequential damages), payments, proceeds, settlements or other compensation heretofore or hereafter made, including interest thereon and including but not limited to condemnation awards and insurance proceeds.

All of foregoing, as now or hereafter existing.

**THE PROCEEDS OF THE NOTE THIS MORTGAGE SECURES WILL BE USED FOR BUSINESS OR COMMERCIAL PURPOSE.**

**THIS IS A FIRST MORTGAGE.**

**AND** Mortgagor covenants that Mortgagor is lawfully seized of the fee simple estate in the Property hereby conveyed and has good and lawful right and full power to mortgage, grant, convey and encumber the Property and that the Property is free and clear of all encumbrances except for real property taxes for the current year, not yet due and payable. Mortgagor will warrant and defend the title to the Property against all lawful claims and demands arising after the date of this Mortgage.

**PROVIDED, HOWEVER,** that these presents are upon the condition that if Mortgagor: (a) shall pay or cause to be paid to Lender the principal and all interest due the Lender and any other sums secured by this Mortgage, at the time and in the manner stipulated in the Note or this Mortgage; (b) shall punctually perform, keep and observe all and singular the covenants and promises in the Note, any future advance agreement(s), any renewals, extensions or modifications thereof, and in this Mortgage; and (c) shall not permit or suffer to occur any default under this Mortgage or the Note, then this Mortgage and all the interest and rights hereby granted, bargained, sold, conveyed,

assigned, transferred, mortgaged, pledged, delivered, set over, warranted and confirmed shall cease, terminate and be void.

Mortgagor further covenants and agrees with Lender as follows:

1. **Purpose.** This Mortgage is given as security for the performance and observance of the covenants and agreements herein contained and to secure to the Lender the performance and payment of the obligations set forth in the Loan Documents, including, without limitation, the Note, according to the terms thereof, to the order of Lender.

2. **Payment of Principal and Interest.** Mortgagor shall promptly pay when due the principal and interest on the debt evidenced by the Note, in accordance with the terms and provisions thereof.

3. **Taxes and Liens.** Mortgagor shall pay all sums, the failure to pay which may result in the acquisition of a lien prior to the lien of this Mortgage before such a prior lien may attach, or which may result in conferring upon a tenant of any part of the Property a right to recover such sums as prepaid rent, or as a credit or offset against any future rental obligation. Mortgagor shall promptly pay all sums, taxes, assessments, charges, fines and impositions attributable to the Property. Mortgagor shall pay these obligations on time directly to the person owed payment. Mortgagor shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Mortgagor makes these payments directly, Mortgagor shall promptly furnish to Lender, receipts evidencing such payments. Mortgagor's failure to timely pay such taxes, assessments and charges shall be deemed a default hereunder. Notwithstanding the foregoing, Lender may require that Mortgagor establish and maintain an escrow account with Lender for such payments and/or Lender may, in its sole discretion, advance any such sums as may be due for such taxes, assessments and charges and same shall be secured hereby, as set forth in Paragraph 15 hereof.

4. **Insurance.** Mortgagor shall at all times during the term of the Loan maintain the following insurance coverage:

a. as to all types of properties: (i) general comprehensive liability insurance with limits of not less than \$1,000,000.00 as to personal injury or death, (ii) windstorm insurance, covering all buildings, improvements and equipment now or hereafter located on the real property, at their highest insurable value on a replacement costs basis, (iii) flood insurance, all buildings, improvements and equipment now or hereafter located on the real property, at their highest insurable value on a replacement costs basis, and (iv) during any construction on the Property, builder's risk, at the highest insurable value on a replacement cost basis and in accordance with local insurance practice;

b. as to a condominium unit: (i) an HO6 insurance policy, with full replacement cost coverage, and (ii) naming the Lender as loss payee as to the subject unit on the Condominium Association's master insurance policy; and

c. as to all other real property (including but not limited to single-family residences, duplexes, commercial property) (i) "all risk" property insurance covering all buildings, improvements and equipment now or hereafter located on the real property, at their highest insurable value on a replacement costs basis, and (ii) for income-producing property, business interruption and/or loss of rents insurance, as applicable, to insure the income stream for a period of not less than twelve (12) months.

Such insurance policies shall name Lender as an additional insured, mortgagee and first loss payee, as applicable, and shall be non-cancellable without at least thirty (30) days' advance written notice to Lender. Mortgagor shall deliver to the Lender evidence of continuing insurance coverage at least fifteen (15) days before the date any existing policy expires. Should Mortgagor's failure to timely pay such insurance premiums or to maintain adequate insurance shall be deemed a default hereunder. Notwithstanding the foregoing, Lender may require that Mortgagor establish and maintain an escrow account with Lender for such payments and/or Lender may, in its sole discretion, advance any such sums as may be due for such insurance and related charges and or purchase adequate insurance where Borrower fails to and any such payments shall be secured hereby, as set forth in Paragraph 15 hereof.

Mortgagor shall give prompt written notice to Lender of the happening of any casualty to the Property. In the event of damage to or destruction of any improvements on the Property, Lender shall have the option, in its sole

discretion, of applying or paying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Lender may determine, and/or (ii) to the restoration of the Property or its improvements, and/or (iii) to Mortgagor. Notwithstanding the preceding sentence, Mortgagor may use insurance proceeds for restoration of the Property or its improvements following a partial casualty loss, for which the cost of restoration (as reasonably determined by Lender) is \$10,000.00 or less, subject to (i) Mortgagor maintaining the Mortgage free from default at all times, (ii) Mortgagor providing evidence that adequate funds are available to restore the improvements and advancing any additional funds required prior to the disbursement of insurance proceeds, and (iii) Mortgagor provides to Lender proof of restoration of the Property or its improvements and proof of payment of all sums due in connection therewith. Lender or its agent shall be granted access to the Property to confirm that the Mortgagor has restored the Property or improvements as herein set forth to the satisfaction of Lender.

In the event any loss or damage, all proceeds of insurance shall be payable to Mortgagor and Lender, Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender for proceeds in excess of \$10,000.00. Mortgagor hereby irrevocably appoints Lender its attorney-in-fact coupled with an interest with the power and authority to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise. Notwithstanding any insurance proceeds received by Lender and actually applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Property as provided in this Mortgage or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Lender of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice. Nothing herein shall relieve Mortgagor from making the payments required under the Note or of any other obligation of Mortgagor secured hereby.

**5. Assignment of Leases, Rents and Profits.** As further security for repayment of the Loan, Mortgagor hereby assigns and transfers to Lender, as an outright assignment and not solely as a collateral assignment, all rents, income, issues and profits of the Property and all right, title and interest of Mortgagor in and under all leases and tenancies (and any extensions and renewals thereof) now or hereafter affecting the Property; provided, however, that no such assignment shall be construed as a consent by the Lender to any lease or tenancy so assigned, or to impose upon the Lender any obligations with respect thereto. Notwithstanding the foregoing, provided that there is no default in the performance or observance of any of the covenants or agreements contained in the Note or this Mortgage, Lender grants to Mortgagor a revocable license to collect and receive all rents, income, issues and profits accruing under or arising as a result of the leases and tenancies of the Property or any part thereof. Upon the occurrence of any default under the Note or this Mortgage, or at any time during its continuance, the license and all right of Mortgagor to collect or receive rents or profits shall wholly and automatically terminate without notice to Mortgagor and Lender may notice and authorize the tenants to make payment directly to Lender. The collection of rents hereunder by Lender shall not be deemed to impose on Lender any liability relative to the Property, the leases or tenancies, or the rents, issues and profits thereof. Mortgagor will faithfully keep and perform all of the obligations of as landlord under applicable law and all of the leases and tenancies now or hereafter assigned to the Lender, will promptly notify and seek collection of past due rent and will promptly commence eviction proceedings.

**6. Maintenance of Property; No Waste.** Mortgagor will keep the Property in good order and repair and will not commit or suffer any waste or stripping of the Property or any violation of any law, regulation, ordinance or contract affecting the Property or the use or occupancy thereof and will not commit or suffer any demolition, removal or material alteration of any of the buildings or improvements (including fixtures) on the Property without the prior written consent of the Lender, which consent will not be unreasonably withheld, conditional or delayed. Mortgagor has obtained and shall maintain in good standing any and all necessary permits and licenses with respect to the Property and any and all uses or occupancies thereon. All necessary utilities are and at all times hereunder shall be available in sufficient capacity to satisfactorily service the Property.

The Mortgagor will not acquire any appliances, equipment, machinery, furniture, furnishings, fixtures or apparatus covered by this Mortgage subject to any security interest, conditional sale, title retention arrangement or other charge or lien taking precedence over this Mortgage. The Mortgagor shall have the right to add, substitute or replace such appliances, machinery and equipment during the term hereof, provided, however, that the Mortgagor shall not so add, substitute or replace in such a manner as to substantially diminish or impair the value of the security of this Mortgage and provided further that all of the right, title and interest of the Mortgagor in all such replacement or additional appliances, machinery and equipment shall, when acquired by the Mortgagor, be encumbered by the

lien of this Mortgage and become an integral part of the security under this Mortgage. In events of removal of non-material assets by the Mortgagor, the Mortgagor shall not be required to replace such assets as contemplated herein unless such removal without replacement will serve to substantially diminish or impair the value of the security of this Mortgage or materially affect the business operations of the Mortgagor on the Property or Mortgagor's ability to fulfill its obligations hereunder. The Mortgagor expressly agrees that it shall not, without replacing same, remove as part of the Property any tangible personal property or fixture having a salvage value in excess of \$500.00. For the purposes of this paragraph, non-material assets are those items of personal property having a salvage value of \$500.00 or less.

**7. Laws and Ordinances.** Mortgagor shall at all times during the term hereof comply with and conform to the requirements of all federal, state and local laws, ordinances, regulations, conditions and restrictions applicable or pertaining to, or affecting, the Property and improvements described herein or the business and operations of the Mortgagor, and Mortgagor shall not knowingly commit, suffer or permit any act to be done in violation thereof, including, without limitation, all federal, state and local pollution control laws and regulations affecting the Property.

**8. Construction.** Mortgagor shall not make any alterations or perform any construction on the Property during the term of the Loan unless expressly approved in writing by Lender. There is not now, and at the date of execution and recordation of the Note and this Mortgage there will not be, any visible commencement of operations incident to the Construction or the recording of a Notice of Commencement in the Public Records that would cause mechanics' liens to prime the Mortgage or otherwise affect the priority of the lien of this Mortgage on the Property.

In the event the Lender agrees to permit construction on the Property during the term of the Loan, the following shall apply:

The Construction will comply with all applicable restrictive covenants, zoning ordinances and building codes, all applicable health and environmental laws and regulations and all other applicable laws, rules and regulations and all standards and regulations of appropriate supervising boards of fire underwriters and similar agencies. All building, zoning, utility, health and operating permits (if any) required for the Construction have been obtained or will be obtained prior to commencement of Construction and copies of same will be delivered to Lender. All work shall be performed by licensed and insured contractors and subcontractors.

The Construction shall be performed in accordance with the all restrictions, conditions, ordinances, codes, regulations and laws of governmental departments and agencies having direction or jurisdiction over or an interest in the Property or its improvements. Mortgagor shall comply with the requirements of all permits and approvals and every other condition, requirement, regulation, or other restriction that may be imposed upon Mortgagor or the improvements by any governmental agency.

Construction shall commence promptly and shall be carried on continuously, diligently and with dispatch until completed, in a good and workmanlike manner in accordance with all applicable governmental requirements, and free from any material defects. Mortgagor shall cause the issuance of all necessary final and unconditional certificates of completion and occupancy, and other inspections and approvals for the Construction by appropriate governmental authorities; and the Property shall at all time be free and clear of all construction liens and claims of lien for labor, materials or services. In the event, it is determined any such liens exist, the Mortgagor will promptly dispose of same as a lien or encumbrance on the Property (by bonding, satisfaction, release or otherwise) at the Mortgagor's sole cost and expense within thirty (30) days of the date of the filing of such lien and Mortgagor will indemnify and hold harmless the Lender against any all damages, claims and demands of every nature whatsoever arising as a result of such liens. Mortgagor shall comply with Chapter 713, Fla. Stat., and shall obtain Releases of Lien for all progress payments and Final Releases of Lien for all final payments from all contractors, subcontractors and materialmen and shall deliver same to Lender upon demand.

All Notices of Commencement shall name lender as a party to be notified by contractors,

subcontractors and materialmen, as to Notices to Owner, in the event of non-payment or the intent to file a lien or the filing of a lien on the Property as a result of the Construction. Mortgagor represents and warrants to Lender that sufficient funds are available to Mortgagor in addition to proceeds of the Note to pay all costs of Construction to bring the Property in compliance with all laws, ordinances, code and regulations applicable to the Property, for payment of all related soft costs and for compliance with Mortgagor and/or borrower's other obligations under the Loan Documents.

**9. Inspection.** Lender or its agent may, upon reasonable notice, make reasonable entries upon and inspections of the Property for the purpose of inspecting same and/or ascertaining that the various requirements and restrictions contained herein are being complied with by the Mortgagor.

**10. Prohibited Encumbrances and Transfers; Due on Sale.** Mortgagor shall not grant any lien or mortgage on all or any part of the Property or any interest therein, nor make any further assignment of the leases, rents or profits of the Property, without the prior written consent of Lender, which consent Lender may grant or withhold in its sole discretion. Mortgagor shall not mortgage, sell, convey, transfer, exchange, pledge or hypothecate all or any portion of the title to all or any portion of the Property or any interest therein, either voluntarily or by operation of law. As used in this paragraph, "transfer" shall include without limitation: (i) any sale or conveyance of the Property or any part thereof, or any interest therein, except leases for occupancy subordinate to this Mortgage; and (ii) if the Mortgagor should at any time be a legal entity (corporation, limited liability company, limited partnership), the sale, assignment, conveyance, transfer, pledge or hypothecation of any ownership interest (stockholder interest, membership interest, partnership, as applicable) in Mortgagor or any conversion or merger not authorized by the written consent of Lender, it being acknowledged by Mortgagor that, if the Mortgagor or the borrower under the Loan is a legal entity, Lender has relied on the financial worthiness and/or credit of the principals of Mortgagor or the borrower in granting the Loan and, to the extent applicable, on the special-purpose nature of the Mortgagor or borrower.

Mortgagor shall pay all sums, the failure to pay which may result in the acquisition of a lien against the Property prior to the lien of this Mortgage before such a prior lien may attach. Mortgagor represents and warrants that it will perform and promptly fulfill all of the covenants contained in any inferior mortgages on any and all of the Property encumbered hereby, which have been approved by Lender. In the event Mortgagor shall fail to do so, Lender may, in addition to the rights otherwise granted Lender hereunder, at its election, perform or fulfill such covenants of any such inferior mortgages without affecting its option to foreclose any of the rights hereunder. Mortgagor covenants and agrees that it shall not file, pursuant to Section 697.04(1)(b), Fla. Stat., an instrument of record limiting the maximum amount which may be secured by this Mortgage.

**11. Release/Substitution of Collateral.** Lender may, in its sole and absolute discretion, release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Mortgagor's obligations secured hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. Upon such release or substitution of collateral this Mortgage shall continue as a lien and security interest in the remaining portion of the Property.

**12. Condemnation.** Should the Property or any part thereof or interest therein, be taken or damaged by reason of any public use or improvement or condemnation proceeding, or in any other manner ("Condemnation") or should Mortgagor receive any notice or information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Lender.

Lender shall be entitled to all awards granted in connection with such Condemnation ("Awards") and shall be entitled, at its option, to appear in its own name or the Mortgagor's name, in any action or proceeding relating thereto. In the event of such an appearance, Mortgagor agrees to pay reasonable attorneys' fees incurred by Lender. All Awards payable to Mortgagor are a portion of the Property secured hereby and are hereby assigned to Lender, and Mortgagor agrees to execute such further assignments thereof as Lender may require from time to time.

In the event any portion of the Property is so taken or damaged, Lender shall have the option in its sole and absolute discretion to a) retain and apply all such Awards, after deducting therefrom all costs and expenses (regardless of the particular nature thereof or whether incurred with or without suit), including attorneys' fees incurred by it in connection with such Awards, upon any indebtedness secured hereby, or b) apply all such Awards after such deductions to the restoration of the Property upon such conditions as Lender may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any action done pursuant to such notice. Any amounts received by Lender hereunder and applied to the Loan as per (a) above shall be applied in payment of any accrued interest and then in reduction of the then outstanding principal sum of the Loan secured hereby, notwithstanding that same may not then be due and payable.

**13. Financial Statements; Books and Records.** Mortgagor will deliver to the Lender, in detail satisfactory to the Lender, on or before March 31 of each calendar year, financial statements for Mortgagor for the prior calendar year. Lender and its representatives shall have the right to inspect all books of accounts relating to the Property and the financial and business requirements contained herein (and to make copies or extracts therefrom) and to cause such books to be audited by such independent public accountants selected by the Lender.

**14. Future Advances.** This Mortgage is given to secure not only the existing indebtedness of the Mortgagor to the Lender evidenced by the Note secured hereby, but also (a) such future advances as are made within twenty (20) years from the date hereof, plus interest thereon, which together with the original principal sum secured by this Mortgage shall not exceed twice the original principal sum secured hereby ("Loan Advances"), and (b) any disbursements made by Lender to protect its collateral, i.e. for the payment of taxes, insurance and liens on the Property, with interest on such disbursements at the default rate set forth in the Note ("Cost Advances"). The total amount of indebtedness secured hereby may increase or decrease from time to time, however, that at no time shall the Loan and Loan Advances (but expressly excluding Cost Advances), exceed twice the original principal sum secured hereby. Loan Advances and Costs Advances shall be secured hereby to the same extent as if such advances were made this date and which advances shall have the same priority as the original indebtedness evidenced by the Note. Mortgagor covenants and agrees that it shall not file, pursuant to §697.04(1)(b), Fla. Stat., an instrument of record limiting the maximum amount which may be secured by this Mortgage. The provisions of this paragraph shall not be construed to imply any obligation on Lender to make any Cost Advances, it being the intention of the parties that any Cost Advances shall be solely at the discretion and option of Lender. Any reference to the Note in this Mortgage shall be construed to include any Cost Advances made pursuant to this paragraph.

**15. Advances Hereunder.** In the event of any default in the performance of any of Mortgagor's covenants or agreements contained in this Mortgage Lender shall have the right (but in no event the obligation) at its option to make an Cost Advances to cure the default or take any other action Lender deems necessary or desirable to protect its security (including without limitation the payment of any taxes, assessments, premiums, charges, liens or encumbrances required of Mortgagor under this Mortgage), without thereby waiving any rights or remedies otherwise available to Lender. If Lender shall elect to make any Cost Advances at any time any sum(s) for the protection of its security or for any other reason permitted or provided by any of the terms of this Mortgage then such sum(s) shall be deemed Loan funds, shall be evidenced by the Note and secured by this Mortgage and shall bear interest until paid at the "default rate" provided in the Note commencing on the date they are advanced by Lender. If advanced by Lender before the (natural or accelerated) maturity date of the Loan, such sum(s) shall be due and payable by Mortgagor upon demand, but if advanced after the (natural or accelerated) maturity date, such sum(s) shall be due and payable immediately without demand. Lender's lien on the Property for such advances shall be superior to any right or title to, interest in, or claim upon all or any portion of the Property junior to the lien of this Mortgage. Without the prior written consent of Lender, which Lender may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage.

**16. INTENTIONALLY DELETED**

**17. Estoppe Letters and Information.** Upon request made either personally or by mail, Mortgagor shall certify to Lender (or to any proposed assignee of this Mortgage) in writing within five (5) days of receipt of a request therefore, the amount of principal and interest and other sums then owing on the Loan and whether any offsets or defenses exist against the payment of the Loan. Mortgagor shall promptly furnish to Lender any financial or other information regarding Mortgagor or the Property required by any other documents evidencing and/or securing the Loan or which Lender may reasonably request from time to time.

18. **Uniform Commercial Code.** This Mortgage shall, in addition to constituting a mortgage, constitute a Security Agreement, as defined in the Florida Uniform Commercial Code. The remedies for any violation of the covenants, terms and conditions contained in this Mortgage shall be as prescribed: (i) in this Mortgage, (ii) by general law or (iii) as to any items included in the definition of the Property that may also be listed in any filed financing statement, by the specific statutory provisions now or hereafter enacted and specified in the Florida Uniform Commercial Code, all at Lender's sole election.

19. **Default.** At Lender's option, all of the principal and interest and other sums secured by this Mortgage shall immediately or at any time thereafter become due and payable without notice to the Mortgagor, and Lender shall immediately have all the rights and remedies accorded Lender by law and hereunder to enforce this Mortgage or the Note upon the occurrence of any of the following events of defaults:

a. if any payment of principal, interest, or other sum due the Lender under the terms of the Note, this Mortgage or any other Loan Documents is not paid as and when due, after expiration of any applicable grace period;

b. any default in the observance or performance of any other covenant or agreement contained in the Loan Documents, the occurrence of any other event prohibited by the terms of the Loan Documents, or the violation of any other provision of the Loan Documents;

c. if any representation, warranty, affidavit or statement made or delivered to Lender by Borrower or any guarantor shall be deemed by Lender to be false, incorrect or misleading;

d. the institution of any proceeding in bankruptcy, reorganization or insolvency against or by the Borrower or a guarantor, if any, or the appointment of a trustee or receiver of the Borrower's or a Guarantor's property; or

e. the death or incapacity of a Borrower or a guarantor who is a natural person, or the dissolution, termination of existence, merger or consolidation of a Borrower or guarantor that is a legal entity, trust or other such entity.

Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy with respect to any further default of the same or a different nature. No consent or waiver shall be deemed or construed to exist by reason of any curative action initiated by Lender. Lender is not required to pay or advance any funds to cure a default prior to availing itself of its remedies hereunder.

20. **Acceleration; Remedies.** Upon the occurrence of any event of default by Mortgagor under this Mortgage or the Note, Lender may without notice or demand exercise all rights and remedies provided in this Mortgage or the Note and/or which may be available to Lender by law that Lender deems advisable to protect and enforce its rights against Mortgagor and in and to the Property and all such rights and remedies shall be cumulative and concurrent and may be pursued singularly, successively or concurrently, at Lender's sole option, and may be exercised as often as occasion therefor shall arise. Lender may resort for the payment of the Loan to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Loan, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to pursue one remedy herein to the exclusion of any other remedy. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Upon the occurrence of an event of default as aforesaid, Lender may, *inter alia*, anything herein contained to the contrary notwithstanding:

a. declare the Loan, all interest thereon and all other amounts payable thereunder to be immediately due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Mortgagor.

b. initiate a lawsuit to enforce the Note and/or any guaranties given in connection herewith and/or to foreclosure this Mortgage and proceed thereon to collect all sums due hereunder, including pre-trial, trial and appellate level attorneys' fees and costs.

c. institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in any other Loan Documents.

d. appoint a receiver for the benefit of Lender to enter upon, take possession of and manage the Property and collect the benefits and all rents, revenues, issues, income, products and profits thereof and of the Property, without liability for trespass, damages or otherwise and without regard for the adequacy of the security for the Loan and without regard for the solvency of Mortgagor, any guarantor or indemnitor under the Loan or any other person or entity liable for the payment of the Loan. The Lender, and/or its receiver shall have the right, but not the obligation, to (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereon; (ii) complete any construction on the Property in such manner and form as the Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; and (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents of the Property and every part thereof. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees of Lender in enforcement and collection of the indebtedness due under the Note and preservation of the collateral security for the Loan, and then to the sums secured by this Mortgage. All such expenses, including receiver's fees and attorneys' fees and costs (at the pre-trial, trial and appellate levels), incurred pursuant to the powers herein contained shall be deemed indebtedness evidenced by the Note and secured by this Mortgage as set forth in Paragraph 15 hereof.

e. without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof.

f. pursue such other remedies as Lender may have under the Note, this Mortgage, any other Loan Documents or applicable law.

**21. Fees and Expenses.** Mortgagor shall pay any and all costs, expenses and attorneys' fees incurred by Lender (regardless of whether in connection with any action, proceeding or appeal) to sustain the lien of this Mortgage or its priority, to protect or enforce any of Lender's rights under this Mortgage or the Note, or to recover any indebtedness secured hereby. Mortgagor shall also pay for any documentary stamp tax, intangible tax and other costs due in connection herewith.

**22. Representations and Warranties.** In order to induce Lender to make the Loan, Mortgagor represents and warrants that: (a) Mortgagor is lawfully seized of the Property as a good and marketable, insurable and indefeasible estate in fee simple and has good and lawful right and full power to sell and convey and encumber the same; (b) the Property is free and clear of all encumbrances except for taxes and assessments for the current year which are not yet due and payable; (c) this Mortgage creates a valid, first priority lien on the Property; (d) there are no actions, suits or proceedings pending or threatened against or affecting Mortgagor or the Property, at law or in equity, which materially affect the performance by Mortgagor of its obligations under this Mortgage or the Note or which may result in any material adverse change in the business, properties or assets or in the condition, financial or otherwise, of the Mortgagor or the Property; (e) Mortgagor is duly formed and validly existing legal entity in good standing under the laws of the state of its formation and at all times during the term hereof it shall remain validly existing and in good standing under the such laws and shall not take any action or fail to take any action that will result in its dissolution; (f) Mortgagor has taken all necessary legal and, where applicable, company action required to authorize the execution, delivery and performance of the Note and this Mortgage; (g) the Loan Documents and the performance of the obligations of Mortgagor thereunder will not violate any provision of law or the governing documents of Mortgagor or result in the breach or constitute a default under any indenture or other agreement or instrument to which the Mortgagor or the Property is bound; and (h) the Note and this Mortgage constitute valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their respective terms.

**23. Further Instruments.** Mortgagor shall execute and deliver to Lender, from time to time and on demand, any further instruments (and pay the costs of preparation and recording thereof), including but not limited to mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the obligations secured hereby and the security interest of Lender in all the property intended to be mortgaged hereby, whether now mortgaged, later substituted for other collateral, or acquired subsequent to the date of this Mortgage.

**24. Indemnity.** In the event Lender shall be named as a party to any lawsuit brought at any time against Mortgagor or with respect to the Property or this Mortgage or the Loan, then, regardless of the merits of such lawsuit, Mortgagor shall defend Lender and indemnify and hold Lender fully harmless from any and all claims, demands, damages, liabilities, judgments, losses, costs, expenses and attorney's fees arising out of or resulting from any such lawsuit or any appeal in connection therewith.

**25. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, by email, facsimile transmission, by overnight express mail service or mailed by certified mail (return receipt requested), postage prepaid, to the parties at the addresses set forth herein (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof).

**26. Severability.** If any provision or any portion of any provision of this Mortgage, or the application of any provision or any portion thereof to any person or circumstance, shall be held invalid or unenforceable, the remaining portion of such provision and remaining provisions of this Mortgage, or the application of such provision or portion of such provision as is held invalid or unenforceable to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**27. Time.** Time is of the essence relative to the performance of the terms of this Mortgage.

**28. Failure to Insist Upon Strict Performance.** The failure of the Lender to insist upon or enforce any of their rights under this Mortgage shall not constitute a waiver thereof. Lender may waive the benefit of any provision or condition for its benefit which is contained in this Mortgage.

**29. Entire Agreement.** This Mortgage, together with the loan documents referenced and incorporated herein, including but not limited to the Note and any guaranties given in connection therewith, and the applicable terms and provisions of the real estate purchase contract relative to financing that survive the closing on the purchase, constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no other agreements, representations or warranties other than as set forth herein. This Mortgage may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Mortgage shall be binding upon the parties hereto and their respective successors and permitted assigns.

**30. Governing Law.** This Mortgage shall be interpreted, governed by, and construed and enforced in accordance with the laws of the State of Florida. Venue for any legal proceeding between the parties shall lie in **Miami-Dade County, Florida** and Mortgagor waives the defense of *forum non conveniens*. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage or the Note are declared to be severable.

**31. Attorneys Fees.** In the event the Lender is required to take action to collect or enforce this Mortgage, the Note or any other Loan Document, or if the Lender becomes a party either as Plaintiff or a defendant in any lawsuit or legal or administrative proceeding in relation to the Property or the lien created by this Mortgage, Mortgagor shall be responsible for and shall indemnify and hold Lender harmless for Lender's attorneys fees and costs in connection therewith, whether or not suit be brought, and whether incurred in connection with collection, pre-trial, trial, appeal, bankruptcy or otherwise. Such entitlement to attorneys fees shall not merge with the entry of final judgment and shall continue post-judgment for purposes of execution and deficiency until any and indebtedness due Lender is fully satisfied. Notwithstanding the existence of §57.105, Fla.Stat., or any statute of a like or similar nature, Mortgagor hereby waives any right to attorneys' fees and agrees that Lender exclusively shall be entitled to

indemnification and recovery of any and all attorneys' fees in respect of any collection, enforcement or litigation based hereon, or arising out of, or related hereto, whether, under or in connection with this Mortgage or the Loan Documents or an course of conduct, course of dealing, statements or actions of any party.

**32. Waiver of Jury Trial.** MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, THE NOTE OR ANY OTHER LOAN DOCUMENTS EXECUTED AND DELIVERED OR CONTEMPLATED TO BE EXECUTED AND DELIVERED IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO GRANT THE LOAN TO MORTGAGOR. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO SEEK LEGAL COUNSEL TO REPRESENT IT IN CONNECTION WITH THIS MORTGAGE.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed as of the date first above written.

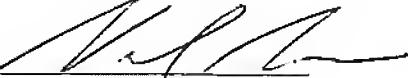
THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$3,000,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE LENDER UNDER THE TERMS OF THIS MORTGAGE.

WITNESSES:

Witness Signature: 

Printed Name: Arthur Fruman

SEAFRONT PROPERTIES LLC  
By:   
Steven Fruman - Manager

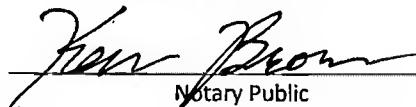
Witness Signature: 

Printed Name: Dee L Ross

STATE OF NEW YORK  
COUNTY OF New York )

THE FOREGOING INSTRUMENT was acknowledged before me this 14<sup>th</sup> day of May, 2018  
by Steven Fruman, as the Manager of Seafront Properties LLC, a Florida limited liability company, on behalf of the  
company. He  is personally known to me or  has produced a NYS Driv Lic FL Driv Lic  
as identification.

My commission expires:

  
Notary Public

KEVIN R BROWN
Notary Public - State of New York
NO. 01BA6356903
Qualified in Bronx County
My Commission Expires Apr 10, 2021

## CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 15 day of May, 2018, and is incorporated into and shall be deemed to amend and supplement the Mortgage to which this Rider is attached (the "Mortgage") encumbering the Property described in the Mortgage and located at:

10295 Collins Avenue, Unit 1508, Miami Beach, Florida

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

10295 COLLINS AVENUE RESIDENTIAL CONDOMINIUM

(the "Condominium Project").

All capitalized terms used herein shall have the meaning ascribed to them in the Mortgage, unless otherwise indicated.

If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Mortgagor's interest in the Owners Association and the uses, proceeds and benefits of Mortgagor's interest.

**CONDOMINIUM COVENANTS.** In addition to the covenants and agreements made in the Mortgage, Mortgagor and Lender further covenant and agree as follows:

**A. Condominium Obligations.** Mortgagor shall perform all of Mortgagor's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) Bylaws; (iii) Rules and Regulations; and (iv) other equivalent documents. Mortgagor shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents. Mortgagor shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy. In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Mortgagor are hereby assigned and shall be paid to Lender for application to the sums secured by the Mortgage, whether or not then due, with the excess, if any, paid to Mortgagor.

**B. Public Liability Insurance.** Mortgagor shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**C. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Mortgagor in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Mortgage as provided in the Mortgage.

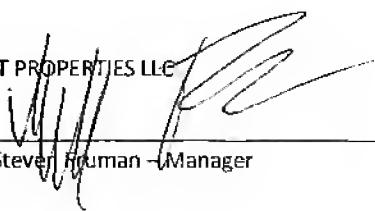
**D. Lender's Prior Consent.** Mortgagor shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**E. Remedies.** If Mortgagor does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Mortgagor secured by the Mortgage. Unless Mortgagor and Lender agree to other terms of payment, these amounts shall bear

interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Mortgagor requesting payment.

BY SIGNING BELOW, Mortgagor accepts and agrees to the terms and covenants contained in this Condominium Rider.

SEAFRONT PROPERTIES LLC

By: 

Steven Rouman - Manager